

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

BRUCE THORNS,

Plaintiff,

S. RYAN, et al.,

Defendants.

CASE NO. 3:07-CV-00218-H-AJB

ORDER REGARDING PLAINTIFF'S REQUEST FOR TRANSCRIPTS

[Doc. Nos. 163 & 167.]

On April 28, 2010, pro se Plaintiff Bruce Thorns filed a request for transcripts of his civil jury trial arising out of his complaint pursuant to 42 U.S.C. § 1983 against the warden and numerous correctional officers at Calipatria State Prison. (Doc. No. 163.) Plaintiff requested a transcript of his pretrial proceedings held on February 22, 2010, as well as the trial held on February 23-25. (*Id.* at 1.) Plaintiff's request indicated that Plaintiff agreed to pay for the cost of the transcripts. (*Id.*) Plaintiff has not submitted payment for the requested transcripts.¹ On September 13, 2010, the Court of Appeals reinstated Plaintiff's appeal and issued a briefing schedule. (Doc. No. 165.) The Court of Appeals granted Plaintiff leave to proceed in forma pauperis in his appeal. (Doc. No. 166.) On September 27, 2010, Plaintiff filed a second request for transcripts. (Doc. No. 167.)

¹ The estimated cost of the transcripts is approximately \$3,500.

1 An appellant proceeding in forma pauperis on appeal may request the production of
2 transcripts at government expense pursuant to 28 U.S.C. §§ 753(f) and 1915(c). Section 753
3 provides:

4 Fees for transcripts furnished in criminal proceedings to persons proceeding
5 under the Criminal Justice Act (18 U.S.C. 3006A), or in habeas corpus
6 proceedings to persons allowed to sue, defend, or appeal in forma pauperis,
7 shall be paid by the United States out of moneys appropriated for those
8 purposes. ... Fees for transcripts furnished in other proceedings to persons
9 permitted to appeal in forma pauperis shall also be paid by the United States if
10 the trial judge or a circuit judge certifies that the appeal is not frivolous (but
11 presents a substantial question).

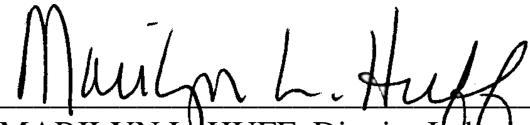
12 28 U.S.C. § 753(f). The court should grant the request in a civil proceeding only where the
13 appeal presents a substantial question. See Henderson v. United States, 734 F.2d 483, 484
14 (9th Cir. 1984). The district court may deny a motion for transcripts at government expense
15 where the appellant fails to identify the grounds for appeal. See McKinney v. Anderson, 924
16 F.2d 1500, 1512 (9th Cir. 1991), overruled on other grounds by Helling v. McKinney, 502
17 U.S. 903 (1991). If the district court denies the motion, the appellant may seek such relief in
18 the appellate court.

19 Here, Plaintiff requests a transcript in a civil proceeding brought pursuant to 42 U.S.C.
20 § 1983. Because, Plaintiff's request for transcripts was not made in a criminal or in habeas
21 corpus proceedings, Plaintiff does not qualify for production of transcripts at government
22 expense. See 28 U.S.C. § 753(f). Plaintiff has been granted leave to proceed in forma
23 pauperis on his appeal, and thus he may request the production of transcripts at government
24 expense if the Court certifies that the appeal is not frivolous, but presents a substantial
25 question. Plaintiff has not identified any grounds or substantial questions on appeal.
26 Plaintiff had a jury trial on the issues and the jury ruled against him after evaluating the
27 credibility of the parties. Additionally, Plaintiff has not designated specific portions of the
28 transcript in his request. The Court denies Plaintiff's request for transcripts at this time, as
there is no substantial question for appeal. See 28 U.S.C. § 753(f). In lieu of transcripts, the
Court directs the Clerk to provide Plaintiff with a copy of the recorded proceedings before

1 the Court in a CD format.² Additionally, the Court notes that Defendants on appeal may
2 provide relevant portions of transcripts to the Ninth Circuit.

3 **IT IS SO ORDERED.**

4 DATED: September 30, 2010

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6 MARILYN L. HUFF, District Judge
7 UNITED STATES DISTRICT COURT

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² The trial proceedings were before an electronic court recorder, not a court reporter.